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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2714 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DILIP @ KALIYO KANJIBHAI

Versus

STATE OF GUJARAT AND OTHERS

Appearance:

MS SUBHADRA G PATEL for Petitioner
Mr. U.R.Bhatt,A.G.P. for the respondents.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 12/08/96

ORAL JUDGEMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner-detenu has brought under challenge the detention order dated 12.3.96 rendered by the 2nd respondent under section 3(1) of the Gujarat Prevention of Anti-social Activities Act,1985(Act No. 16 of 1985).(Hereinafter referred to as "the PASA Act").

2. In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on criminal cases registered with "B" division police station of Rajkot city. They may be enumerated herein:

sr. Police station	Cr.No.	Sections	Decision
1.	B division	518/95 457,380,I.P.C.	Investigation in progress.
2.	-do-	453/95	-do-
3.	-do-	445/95	-do- -do-
4.	-do-	460/95	454,457,380 I.P.C. -do-
5.	-do-	491/95	-do- -do-
6.	-do-	519/95	457,380 I.P.C. -do-
7.	-do-	29/96	379 I.P.C. -do-
8.	-do-	49/96	457,380,114 I.P.C. -do-

As stated above, all the aforesaid cases are pending at the investigation stage. Besides, the detaining authority has also placed reliance on the statements of three witnesses for the alleged incidents. They have taken place at different points of time, particulars whereof are not set out in the grounds. It has been alleged against the detenu that he has been extorting money and committing offences of theft and housebreaking and creating atmosphere of fear in the concerned localities. Considering these materials, the detaining authority was of the view that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it was fully necessary to pass an order of detention against him. This is how the impugned order came to be passed.

3. I have heard learned advocate for the petitioner and the learned A.G.P. for the State. This petition is capable of being disposed of on the first contention advanced by Ms. S.G.Patel, learned advocate for the petitioner and hence, it would not be necessary to deal with other contentions and grounds advanced to present the cause of the petitioner. It has been contended that the cases registered against the petitioner are all theft cases and they are yet to be established against the detenu. Assuming that the allegations made in the grounds of detention are true, in that event also, at the most, the detenu can be held responsible for committing breach of law and order and under no circumstances, he can be held responsible for breach of public order.

Under the circumstances, the subjective satisfaction arrived at by the detaining authority to the effect that with a view to maintaining public order, the detention of the detenu is necessary, is not genuine and therefore, the impugned order of detention is illegal and void. Reliance has been placed on the decision of this Court rendered on 3.7.96 (Coram: K.R.Vyas,J) in Special Civil Application No. 1610 of 1996. There also, individual charges were of theft. It was held that all the cases registered against the detenu there were for the alleged offences of lurking house trespass and theft filed against detenu. It was therefore, held that there was no question of breach of public order and even considering the statements of the witnesses, the Court found that statements were vague and general and in absence of any cogent material against the detenu, it was held that the subjective satisfaction arrived at by the detaining authority would not be said to be genuine. In my opinion, the present case stands on better footing. As a matter of fact, the reference to the statements of witnesses made in the grounds of detention does not specify the required particulars as to when and where the incidents occurred. It would be interesting to note that the petitioner was in Rajkot Central Jail at the time when the detention order was passed in Vankaner city police station cr. no. 107 of 1995 under sections 457 and 380 of the Indian Penal Code and Sayla police station cr. no. 387 of 1995 under sections 457 and 380 of the Indian Penal Code. In view of the fact that the petitioner was in judicial custody, the detaining authority felt it necessary to pass the impugned order of detention as Vankaner and Sayla police station were not within the jurisdiction of the detaining authority and therefore, the said offences were not taken into consideration in the grounds of detention. But since the petitioner was committing similar offences after being released on bail, the detaining authority had formed the subjective satisfaction for passing the impugned order of detention. In my opinion, for the reasons stated in the above referred decision of this Court and for the reasons stated in this judgment, the subjective satisfaction reached by the detaining authority cannot be said to be genuine.

4. In the result, this petition is allowed. The impugned order of detention is quashed and set aside. The petitioner detenu shall be forthwith set at liberty if he is not required for any other purpose and if he is not released from the judicial custody in other offences as stated hereinabove. Rule is made absolute accordingly.

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